

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

RICO M. GROSS,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

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**No. 3:12-cv-00038
Judge Trauger**

ORDER

The court has before it a petition for a writ of *habeas corpus* brought under 28 U.S.C. § 2254. (Docket Nos. 1, 8). The petitioner, proceeding *pro se*, is an inmate at the West Tennessee State Penitentiary in Henning, Tennessee.

By order and accompanying memorandum entered on March 29, 2012, the court instructed the petitioner to show cause why his petition should not be dismissed as time-barred. (Docket Nos. 9 and 10).

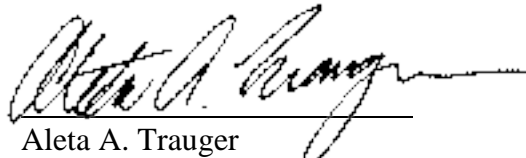
On April 25, 2012, the petitioner filed a Notice of Appeal (Docket No. 12) and a Request for Certificate of Appealability (Docket No. 13).

The petitioner's most recent filings are premature. At this time, the court has neither granted nor denied the petitioner's petition for writ of *habeas corpus*. Appellate jurisdiction lies only where there has been a final judgment. 28 U.S.C. § 1291. In the absence of certification under Rule 54(b), Fed. R. Civ. P., an order disposing of fewer than all of the claims and parties is ordinarily not appealable as a final judgment under § 1291. *Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58, 59-60 (6th Cir. 1986). Because the court's order of March 29, 2012 did not dispose of all of the claims and defendants in this action, the court's order is not appealable under § 1291. Therefore, the

petitioner's notice of appeal (Docket No. 12) shall be **STRICKEN** as premature. No appellate costs will be assessed against the petitioner at this time.

Because the petitioner is proceeding *pro se*, the court will grant the petitioner an extension of ten (10) days from the date of entry of this order within which to submit a written response to the court explaining why the petition should not be dismissed as time-barred. **No further extensions will be granted**, and the petitioner is expressly warned that if he does not comply with the court's order, his petition will be dismissed.

It is so **ORDERED**.


Aleta A. Trauger
United States District Judge